UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ZENAIDA PABLICO-STOVALL,

Plaintiff,

v.

UNIVERSITY OF CALIFORNIA - SAN FRANCISCO,

Defendant.
_____/

No. C 03-5836 MHP

Memorandum and Order
Motion to Dismiss

Beginning in November 1989, the Regents of the University of California ("the Regents") employed plaintiff Zenaida Pablico-Stovall as a patient care assistant at the University of California – San Francisco ("UCSF") medical facility. See Compl. at ¶ 5.[1] On April 17, 2002, while helping to move a UCSF patient, plaintiff sustained an unspecified physical injury. Id. at ¶ 6. As recompense for this injury, plaintiff received some amount of worker's compensation; upon her return to UCSF, plaintiff was delegated reduced and modified work duties. Id. at ¶¶ 6–7.

At some point after her return, plaintiff allegedly told UCSF that she would be willing to be (re)hired as a full-time employee—provided that she need only fulfill "light restricted [work] duties." Id. at ¶ 9. Plaintiff claims that she easily satisfied all skill, experience, and education requirements for a full-time slate of "restricted and modified" work, but that rather than (re)hire her, UCSF allegedly filled all available positions with others. Id. at ¶ 10. Plaintiff also claims that UCSF went so far as to ask plaintiff to train these newly hired employees. Id.

On April 24, 2003, for reasons unspecified in the papers filed with this court, the Regents placed plaintiff on involuntary unpaid status. Id. at ¶ 11. Eight months later, on December 24, 2003, plaintiff filed a complaint in this court. Inexpertly pled, plaintiff's complaint states a single cause of action, viz., that the Regents[2] violated Title I of the Americans With Disabilities Act, 42 U.S.C. §§

12112, et seq. ("ADA"), when UCSF refused to (re)hire plaintiff as a full-time "front desk unit services coordinator." See id. at ¶¶ 14–16. Plaintiff claims that defendant's conduct has caused, among other things, "severe emotional distress, emotional pain, suffering, inconvenience, mental anguish and other non-pecuniary losses." Id. at 15. As compensation for these putative injuries, plaintiff seeks $60,000 in special damages, $250,000 in general damages, attorneys' fees, costs, and any additional relief the court may deem appropriate. See id. at ¶ 16. Less than a month later, on January 24, 2004, the Regents filed an *ex parte* application for an order permitting them to file a motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), prior to any preliminary case management conference. The court granted the Regent's *ex parte* application on January 16, 2004, and the Regent's motion to dismiss plaintiff's claim under Rule 12(b)(6) is now before the court.

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Because Rule 12(b)(6) focuses on the "sufficiency" of a claim—and not the claim's substantive merits—"a court may [typically] look only at the face of the complaint to decide a motion to dismiss." Van Buskirk v. Cable News Network, Inc., 284 F.3d 977, 980 (9th Cir. 2002). If "a district court considers evidence outside the pleadings" when deciding a Rule 12(b)(6) motion, the court "must normally convert the 12(b)(6) motion into a [Federal Rule of Civil Procedure] 56 motion for summary judgment, and it must give the nonmoving party an opportunity to respond." United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003). Under Rule 12(b)(6), "unless it appears beyond doubt that plaintiff can prove no set of facts in support of her claim which would entitle her to relief," a motion to dismiss must be denied. Lewis v. Telephone Employees Credit Union, 87 F.3d 1537, 1545 (9th Cir. 1996) (citation omitted); see also Conley v. Gibson, 355 U.S. 41, 45–46 (1957) (permitting dismissal for failure to state a claim only where "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief"). When assessing a Rule 12(b)(6) motion, the court must accept as true "all material allegations of the complaint," and all reasonable inferences must be drawn in favor of the non-moving party. See, e.g., Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337–38 (9th Cir. 1996) (citation omitted).

Title I of the ADA "prohibits employment discrimination against qualified individuals on the basis of disability." See Vinson v. Thomas, 288 F.3d 1145, 1158 (9th Cir. 2002); 42 U.S.C. § 12112. In certain contexts, after specific procedural requirements are satisfied, Title I permits aggrieved employees to seek relief in federal court. Id. But before a plaintiff may seek judicial relief for a violation of Title I, she must first exhaust available administrative remedies. See 42 U.S.C. § 12117; see also Deppe v. United Airlines, 217 F.3d 1262, 1266–67 (9th Cir. 2000). Adequate exhaustion under Title I entails, *inter alia*, the filing of an administrative complaint with the Equal Employment Opportunity Commission ("EEOC") and the acquisition of an EEOC "right-to-sue" letter. Id. Nothing in the record suggests that plaintiff complied with either of these—or any other—germane procedural mandates. It appears, instead, that plaintiff filed a complaint in this court without contacting the EEOC at all; at no point did she properly solicit EEOC aid or permission to sue. Plaintiff's failure to contact the EEOC—and, thus, to exhaust her administrative remedies—precludes her from seeking relief in this court at this time. Id.[3]

As does the Eleventh Amendment to the United States Constitution. Quite recently and quite unequivocally, the Supreme Court held that, absent waiver of Eleventh Amendment immunity, States are not amenable to suit under Title I of the ADA. See Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356, 360 (2001) ("We hold that such suits are barred by the Eleventh Amendment."). Thus, there are only two relevant questions here: one, whether California has waived its Eleventh Amendment protection in this specific context and, two, whether the Regents constitute an arm of the State. Id. Both of these inquiries are quite simple in this instance. To begin, there is nothing to suggest that California has waived its immunity to suit in this instance. Cf. BV Engineering v. University of California, Los Angeles, 858 F.2d 1394, 1397–1400 (9th Cir. 1988) (noting that waiver requires either express consent to suit from a state or clear Congressional intent to condition participation in a federal program on waiver of immunity). Congress did not precondition participation in the broader ADA program on a State waiver of immunity, see Garrett, 531 U.S. at 363–64, and the Regents have manifest no desire whatsoever to consent to this type of

suit. See BV Engineering, 858 F.2d at 1397. In addition, "[i]t has long been established that UC is an instrumentality of the state for purposes of the Eleventh Amendment." Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989) (citing Hamilton v. Regents, 293 U.S. 245, 257 (1934); Jackson v. Hayakawa, 682 F.2d 1344, 1350 (9th Cir. 1982)); see also Regents of the Univ. of Calif. v. Doe, 519 U.S. 425, 429 (1997) (holding that, as an arm of the state, the University of California is immune from suit under the Eleventh Amendment) (citations omitted); Armstrong v. Meyers, 964 F.2d 948, 948 (9th Cir. 1992) ("The Regents, a corporation created by the California constitution, is an arm of the state for Eleventh Amendment purposes . . . ."); cf. Cerrato v. San Francisco Community College Dist., 26 F.3d 968, (9th Cir. 1994) (holding that even community college districts are "dependent instrumentalities of the state of California").[4] The Eleventh Amendment shields the Regents from precisely this type of suit. See id. Plaintiff has not exhausted applicable administrative remedies, and she has failed to articulate a claims not precluded by the Eleventh Amendment. As a consequence, the court lacks jurisdiction to hear plaintiff's Title I (i.e., only) claim, and the Regents' motion to dismiss must be granted. See Fed. R. Civ. P. 12(b)(6).

CONCLUSION

Defendants' motion to dismiss plaintiff's complaint is GRANTED. Because plaintiff's cause of action is barred by the Eleventh Amendment, plaintiff's Title I claim is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: March 8, 2004

MARILYN HALL PATEL
Chief Judge, United States District Court
Northern District of California

ENDNOTES

1. Unless otherwise noted, this fact recitation is culled from the plaintiff's short complaint.

2. Likely because plaintiff's employment was with the University of California – San Francisco, plaintiff identifies UCSF as the defendant in this action. Because plaintiff's ADA claim is better directed against the University's Regents, however, the court will treat plaintiff's suit as if it names the Regents as defendants, not just the San Francisco campus of the larger state University system.

3. Perhaps because this action is so manifestly beyond the court's purview, plaintiff failed to file an opposition to defendant's motion to dismiss. Instead, more than three weeks after an opposition was due, plaintiff's counsel submitted a letter to the court blaming any and all delays on a computer malfunction. Plaintiff's counsel's tardiness is inexcusable, and his overall approach to this litigation has been condemnable. Such dreadful advocacy helps neither the court nor the plaintiff herself.

4. In recent years, courts have elaborated a multi-factored test to determine whether a particular governmental entity may find Eleventh Amendment protection. See, e.g., Savage v. Glendale Union High School, Dist. No. 205, 343 F.3d 1036, 1040–41 (9th Cir. 2003) (examining "(1) whether a money judgment would be satisfied out of state funds; (2) whether the entity performs central governmental functions; (3) whether the entity may sue or be sued; (4) whether the entity has the power to take property in its own name or only in the name of the state; and (5) the corporate status of the entity"). With UC—and its Regents—so plainly "an instrumentality of the state," it is not necessary to assess in detail any of these various factors. See Mitchell v. Los Angeles Cmty. Coll. Dist., 861 F.2d 198, 201 (9th Cir. 1988).